

§ 27.10

good cause shown, grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 27.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 27.9(a), the reviewing official may file the complaint with the hearing clerk as provided in § 27.11.

(b) Upon assignment of the complaint to a presiding officer, the presiding officer shall promptly serve on defendant in the manner prescribed in § 27.8, a notice that an initial decision will be issued under this section.

(c) The presiding officer shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 27.3, the presiding officer shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the presiding officer's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the presiding officer shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the presiding officer denying a defendant's motion under paragraph (e) of this section, is not subject to reconsideration under § 27.38.

(h) The defendant may appeal to the Environmental Appeals Board the decision denying a motion to reopen by filing a notice of appeal within 15 days

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after the presiding officer denies the section. The timely filing of a notice of appeal shall stay the initial decision the Environmental Appeals Board decides the issue.

(i) If the defendant files a timely notice of appeal, the presiding officer shall forward the record of the proceeding to the Environmental Appeals Board.

(j) The Environmental Appeals Board shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the presiding officer.

(k) If the Environmental Appeals Board decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Environmental Appeals Board shall remand the case to the presiding officer with instructions to grant the defendant an opportunity to answer.

(l) If the Environmental Appeals Board decides that the defendant's failure to file a timely answer is not excused, the Environmental Appeals Board shall reinstate the initial decision of the presiding officer, which shall become final and binding upon the parties 30 days after the Environmental Appeals Board issues such decision.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5326, Feb. 13, 1992]

§ 27.11 Referral of complaint and answer to the presiding officer.

(a) Upon receipt of an answer, the reviewing official shall file the complaint and answer with the hearing clerk.

(b) The hearing clerk shall forward the complaint and answer to the Chief administrative law judge who shall assign himself or herself or another administrative law judge as presiding officer. The presiding officer shall then obtain the complaint and answer from the Chief administrative law judge and notify the parties of his or her assignment.

§ 27.12 Notice of hearing.

(a) When the presiding officer obtains the complaint and answer, the presiding officer shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 27.8. At the